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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Station WWOR-TV, Secaucus, New Jersey
File No. BRCT-20070201AJT
MB Docket No. 07-260, DA 11-314

Dear Ms. Dortch:

We write on behalf of Fox Television Stations, Inc. ("Fox"), licensee of WWOR-TV, Secaucus, New Jersey ("WWOR-TV"), to respond to the February 17, 2011 letter from William Lake, Chief, Media Bureau.¹ That letter raised specific questions and requested certain documents relating to letters, dated August 26, 2009 (the "August 26 Letters"), submitted to the Commission by Fox as part of this proceeding. The questions and document requests are set forth below in bold, and Fox's responses follow.

Fox provides these responses in the interest of bringing its long-pending application for renewal of the broadcast license for WWOR-TV to a prompt resolution. Fox is in compliance with Sections 1.17 and 1.65 of the Rules for several reasons: First and foremost, Fox has not, intentionally or otherwise, presented to the Commission any material factual information that is incorrect or misleading. Second and at the very least, given the context, Fox had a reasonable basis for believing that

¹ Letter, dated February 17, 2011, to Fox Television Stations, Inc., from William Lake, Chief, Media Bureau, DA 11-314 ("LOI"). Capitalized terms used in this response and not otherwise defined shall have the meanings ascribed to such terms in the LOI.

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its written factual submissions were correct and not misleading. Finally, because the facts in question – relating to changes in news and public affairs programming (and levels of staffing) after the end of the prior license term – are not legally relevant for Commission review as part of a renewal application, the facts cannot be material or of decisional significance.

Moreover, Fox respectfully submits that the allegations leveled by Voice for New Jersey (“VNJ”) – about which the Media Bureau inquires in the LOI – already have been proven to be without merit.²

Fox reserves all, and waives none, of its constitutional and other objections. Fox offers these responses notwithstanding the fact that the Commission’s LOI, alleging potential violations of Sections 1.17 or 1.65 of the FCC’s Rules, constitutes an unwarranted and constitutionally insensitive inquiry.

Introduction and Background

As Fox previously explained, on August 26, 2009, it submitted two *ex parte* letters, each of which included an exhibit that summarized certain key issues related to WWOR-TV. Fox had utilized the same exhibit submitted on that date, or a version of it, on numerous prior occasions in connection with *ex parte* communications with Commission staff regarding WWOR-TV’s renewal application. The initial version of the document was entitled “WWOR’s Service to New Jersey: Key Facts.” The document’s subtitle referenced that it was created for use in connection with the Commission’s public forum regarding WWOR-TV; accordingly, it was dated November 28, 2007 (the date of the forum).

The “Key Facts” document provided information about WWOR-TV’s daily local newscasts; its weekly public affairs programs; its public service announcements; its local sports and entertainment programming; and its presence in the northern New Jersey community (including its employees working for WWOR-TV). These facts subsequently were adapted for use in an expanded document entitled “WWOR-TV: A Strong Commitment and Record of Service.” This document, in addition to incorporating the information about the station’s performance from the “Key Facts” document, also presented certain legal

² Letter from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Jan. 5, 2010) (the “January 2010 Letter”) and Letter from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Jan. 18, 2011) (the “January 2011 Letter”).

arguments.³ Unlike the “Key Facts” document, however, Fox did not date the expanded version. A date would have confirmed that the expanded document, like its earlier incarnation, was only ever intended to provide a retrospective look at WWOR-TV’s performance during its license term. This latter document was used as Exhibit A to the August 26 Letters.

To be clear, Fox provided the Commission with factual information about WWOR-TV’s news and public service programming, and its staffing, solely because of, and to the extent necessary to respond to, the VNJ Petition to Deny. Fox felt that it would not have been appropriate to leave unanswered VNJ’s inaccurate allegations regarding WWOR-TV’s New Jersey service, including its news and staffing levels during the renewal period. In particular, Fox provided information regarding staffing levels to respond directly to VNJ allegations that the station had abandoned New Jersey and “taken on a strong New York identity.”⁴ Fox’s decision to provide this information to counter VNJ’s allegations did not represent a concession that these are subjects that are legally relevant to FCC review of a renewal application. Indeed, as explained herein, the facts that populate Exhibit A to the August 26 Letters – if interpreted to refer to periods after the end of the prior license term – are decidedly *not* material to a renewal evaluation.

In any case, Fox had at a minimum a reasonable basis for the facts summarized in Exhibit A. Given the filing of the renewal application in February 2007, and the public forum in November of that year, the facts about WWOR-TV initially were presented in the present tense. Fox’s use of the present tense in describing WWOR-TV remained accurate throughout the intervening years and in its various submissions to the Commission between 2007 and 2009.

In July 2009, in response to the national economic recession, WWOR-TV was forced to make changes to its programming and staffing levels.

³ Fox expanded the exhibit in preparation for engaging in *ex parte* discussions with the FCC staff. The version entitled “WWOR-TV: A Strong Commitment and Record of Service,” dealt with three overarching subjects: (i) it refuted erroneous arguments about the purported “unique” legal standard applicable to review of WWOR-TV’s service; (ii) it provided a review of WWOR-TV’s service to New Jersey during its preceding license term; and (iii) it detailed the legal standards applicable to FCC review of all broadcast license renewal applications under Section 309(k) of the Communications Act (the “Act”) (as well as under the First Amendment). Fox used the document (or a form of it) at numerous *ex parte* meetings with the Commission between 2007 and 2009. See, e.g., Letters to Marlene H. Dortch, Secretary, FCC, from Antoinette Cook Bush and Jared S. Sher, Counsel to Fox (dated Aug. 22, 2008, Sept. 3, 2008, and Sept. 5, 2008).

⁴ *In re Application for Renewal of Station License of WWOR-TV, Secaucus, NJ*, File No. BRCT-20070201AJT, Petition to Deny, filed April 30, 2007 (the “VNJ Petition to Deny”), at 14.

Although these changes were openly made and publicly evident, Fox inadvertently failed to revise the text of the exhibit (to change the present tense to past tense) before the document was re-submitted to the FCC on August 26, 2009. Because the document also was not dated as of 2007, Fox understands how the use of the submission on August 26, 2009 could have been a source of immaterial confusion. Within days though, Fox unilaterally and voluntarily eliminated any such confusion by switching relevant passages to the past tense. On September 4, 2009, Fox submitted the revised document as part of the public docket of this proceeding. Only days later, Fox's President of Station Operations attended meetings with two Commissioner's offices to discuss the details related to WWOR-TV's news and staff changes. In addition to the fact that the programming changes were evident (to anyone who watched the station or read newspaper television listings), clearly there was no intent to deceive if the President of Station Operations told two Commissioners' offices about the staff reductions.

As a tactic in their attacks on Fox's renewal application, VNJ and other groups repeatedly have accused Fox of misrepresentation and lack of candor. Notwithstanding that Fox already has responded to and rebutted those charges, the Commission issued the LOI asking Fox for extensive information concerning its news and public affairs programming and its staff levels at numerous points in time over the past four years. As demonstrated herein, in supplying responsive information, Fox confirms that the use of the present tense when discussing news and public affairs programming and staffing levels in the August 26, 2009 version of the exhibit constituted a one-time, isolated oversight – nothing more and nothing less. As far as Fox is aware, there has not been any other instance in which there can be any question as to the accuracy of its presentations to the Commission in this lengthy proceeding. Moreover, that oversight was promptly corrected by Fox, at its own direction, once realized.

Below, Fox responds to the Commission's first eight requests for information (the "Requests") and establishes that Fox is in compliance with Sections 1.17 and 1.65 of the FCC's Rules. In response to Request No. 9, Fox reiterates that the oversight associated with the August 26, 2009 letters is immaterial under settled law and Commission precedent. In short, because Section 309(k) of the Act⁵ limits evaluation of renewal applications to a station's performance during the preceding term of its license, the post-license term news and staffing levels are not material factual information, nor should they be considered to relate to matters of decisional significance. Fox further explains that the FCC's inquiries trample on sensitive First Amendment concerns. Commission precedent confirms that broadcasters' First

⁵ 47 U.S.C. § 309(k).

Amendment rights guarantee them the “the widest latitude of journalistic discretion”⁶ And finally Fox details the ways in which the Commission’s issuance of the LOI – and, more generally, its handling of WWOR-TV’s renewal application – have been highly irregular.

* * *

1. **With respect to the programming described in Sections 2(a)(i) and 2(b) of Exhibit A of the August 26 Letters, (a) state the last date on which the Station regularly aired a one-hour nightly weekday newscast, the last date on which it regularly aired a nightly weekend newscast, and the last date on which it aired each of the named public affairs programs on a weekly basis, and (b) state the total weekly air time devoted to each such program as of the date of your response to this letter.**

- 1(a) WWOR-TV continues to air a regularly scheduled nightly weekday newscast. The last date on which WWOR-TV regularly aired a one-hour nightly weekday newscast was July 10, 2009.

The last date on which WWOR-TV regularly aired a nightly weekend newscast was July 12, 2009.

WWOR-TV continues to air the public affairs program *New Jersey Now* on a weekly basis.

The last date on which WWOR-TV aired the public affairs program *Real Talk* on a weekly basis was July 19, 2009.

- 1(b) WWOR-TV currently devotes 35 minutes per weekday night, or 175 minutes per week (Monday-Friday), to a nightly weekday newscast.

WWOR-TV currently devotes 30 minutes per week to the weekly public affairs program *New Jersey Now*.

WWOR-TV does not currently air a nightly weekend newscast.

WWOR-TV does not currently air the public affairs program *Real Talk*.

⁶ *Letter to Dr. Paul Klite, et. al.*, 12 Comm. Reg. (P&F) 79 (1998) (*aff’d sub nom In re McGraw-Hill Broadcasting Co., Inc., et. al.*, Memorandum Opinion & Order, FCC 01-356 (2001)).

2. For any program referenced in the preceding request that was cancelled or reduced in program length effective on or after June 1, 2007, state the name of the program, the date of cancellation or reduction, and the name of any replacement program that the Station produced and aired. Provide programming schedules that show the air times of each such program referenced in Sections 2(a)(i) and 2(b) of Exhibit A immediately before and after any programming change, to the extent applicable.

Name of Program	Date of Cancellation or Reduction	Name of any Replacement that WWOR-TV Produced and Aired
<i>My 9 News at 10</i> (nightly weekday newscast)	Program was reduced in length from 60 minutes each night (Monday-Friday) to 30 minutes each night (Monday-Friday) beginning July 13, 2009; program was expanded to 35 minutes each night (Monday-Friday) beginning October 26, 2009.	WWOR-TV has produced and aired <i>My 9 News at 11</i> each weekday night (Monday-Friday) as the replacement for <i>My 9 News at 10</i> .
<i>My 9 News at 10</i> (weekend newscast)	The last date on which this program aired was July 12, 2009.	
<i>Real Talk</i>	The last date on which this program aired was July 19, 2009.	

Attached as Exhibit 1 hereto are copies of:

- (1) program schedules showing that the weekday *My 9 News at 10* aired for one hour on WWOR-TV on Friday, July 10, 2009, and that *My 9 News at 11* aired for 30 minutes on WWOR-TV on Monday, July 13, 2009;⁷

⁷ WWOR-TV expanded its regularly scheduled weekday newscast from 30 minutes to 35 minutes beginning October 26, 2009. As discussed in further detail below, when events warrant, WWOR-TV extends its 30-minute regularly-scheduled weekday newscast to one hour. The enclosed

- (2) program schedules showing that the weekend *My 9 News at 10* aired on WWOR-TV on Saturday, July 11, 2009 and Sunday, July 12, 2009, and that the program did not air on Saturday, July 18, 2009 or Sunday, July 19, 2009; and
- (3) program schedules showing that *Real Talk* aired on WWOR-TV on Sunday, July 19, 2009, and that the program did not air on Sunday, July 26, 2009.

The enclosed program schedules, which were obtained from the files of Dan Carlin, WWOR-TV's Vice President for Programming & Research, belie any suggestion that Fox attempted to mislead the Commission or the public regarding the amount of its programming. These schedules were prepared in 2009 for the purpose of advising television program listing services (such as *TV Guide*) about the station's schedule. WWOR-TV's customary practice is to send listing services a file each Monday containing the station's program schedule for the succeeding 5-week period. The enclosed schedules were sent to listing services on Monday, July 6, 2009. Accordingly, the reductions in programming that VNJ alleges were shielded from the Commission were published in newspapers and available on the station's website; thus they were known to the public at large.

3. **With reference to the statement in Exhibit A of the August 26 Letters, Section 2(d)(ii) that "WWOR-TV currently employs over 250 individuals at the Secaucus facility . . .," state the most recent date on which Fox employed more than 250 persons at the Station's Secaucus, New Jersey facility.**

The most recent date on which Fox can verify that it employed more than 250 persons at WWOR-TV's Secaucus, New Jersey facility was June 9, 2009.⁸

4. **With reference to the statement quoted in the immediately preceding request that "WWOR-TV currently employs over 250 individuals at the Secaucus facility"; the statement at Section 2(a)(ii) of Exhibit A to the**

schedules provide examples of this, as WWOR-TV aired a full hour of weekday news on July 21, July 28 and August 6, 2009. These examples happen to coincide with the dates for which the FCC has requested program schedules; they are not the only instances in which WWOR-TV expanded its newscast to a full hour.

⁸ See the response to Request No. 4, below, for a description of how Fox conducted its count of employees.

August 26 Letters that “[d]uring the last two years WWOR-TV has increased its newsgathering capabilities, adding new staff and enhancing its mobile satellite coverage”; the Declaration of Audrey Pass, which was appended to the January 5, 2010 Letter, at paragraph 2, that “WWOR-TV employs more than 75 people. The Secaucus facility is staffed with employees daily between the hours of approximately 7 a.m. and 11:45 p.m.”; and the statement in the same letter that “WWOR-TV maintains a management and production staff with more than 75 employees *in its New Jersey facility every day*” (January 5, 2010 Letter at 8, emphasis in original), provide the following information as of the first business day of each month in which the Licensee made any oral representation or submitted any written representation in this proceeding regarding the staffing at the Station’s Secaucus, New Jersey facility or its newsgathering capabilities (including, but not limited to, representations made on May 30, 2007; November 28, 2007; January 17, 18, 22, 24, 25, 28, and 29, 2008; February 8, 2008; August 21-22, 2008; September 2, 3, 4, and 5, 2008; December 3, 4, 8, 9, 19, and 22, 2008; February 10, 2009; August 25-26, 2009; September 3, 4, 22, and 23, 2009; January 5, 2010; and January 18, 2011), and as of the date of your response to this letter: (a) the number of persons employed by the Station at the Secaucus, New Jersey facility; (b) the number of persons employed at the Secaucus, New Jersey facility who were employed full-time in the Station’s news department; (c) the number of persons employed at the Secaucus, New Jersey facility who were employed by the Station in newsgathering activities (i) full-time and (ii) part-time and the nature of these employees’ activities (for example, reporting, editing); (d) with respect to the foregoing subpart, the number of (i) full-time and (ii) part-time employees of the Station who were also employees, either full-time or part-time, of WNYW(TV), New York, NY, or of any other company or entity that was affiliated with the Station as of each specified time period and the titles, duties, and status (full-time or part-time) of each such employee with respect to the Station and any affiliated company or entity, including WNYW(TV); and (e) the number of news trucks dedicated to WWOR-TV’s mobile satellite coverage of New Jersey. Identify and provide copies of all documents, regardless of the date created, that provide the basis for or otherwise support your response.

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
5/1/2007	277	73	<u>73 Full-Time</u> 1 manager 9 producers 6 anchors 7 writers 10 reporters 15 editors 17 photographers 8 prod. asst. <u>47 Part-Time</u> 2 anchors 7 writers 9 reporters 7 editors 11 photographers 11 prod. asst.	See below for the answer to this question for all dates.	<u>19 Total</u> 1 satellite 0 hybrid 5 microwave 13 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
11/1/2007	286	72	<u>72 Full-Time</u> 2 managers 10 producers 6 anchors 6 writers 10 reporters 15 editors 16 photographers 7 prod. asst. <u>43 Part-Time</u> 1 anchor 8 writers 7 reporters 7 editors 11 photographers 9 prod. asst.		<u>20 Total</u> 1 satellite 1 hybrid 5 microwave 13 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
1/1/2008	288	73	<u>73 Full-Time</u> 2 managers 9 producers 6 anchors 6 writers 10 reporters 16 editors 17 photographers 7 prod. asst. <u>46 Part-Time</u> 1 anchor 6 writers 10 reporters 9 editors 11 photographers 9 prod. asst.		<u>20 Total</u> 1 satellite 1 hybrid 5 microwave 13 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
2/1/2008	292	72	<u>72 Full-Time</u> 2 managers 10 producers 6 anchors 6 writers 10 reporters 15 editors 16 photographers 7 prod. asst. <u>47 Part-Time</u> 2 anchors 9 writers 6 reporters 9 editors 12 photographers 9 prod. asst.		<u>20 Total</u> 1 satellite 1 hybrid 5 microwave 13 non-live
8/1/2008	274	72	<u>72 Full-Time</u> 3 managers 8 producers 5 anchors 7 writers 11 reporters 16 editors 16 photographers 6 prod. asst. <u>34 Part-Time</u> 4 writers 9 reporters 7 editors 6 photographers 8 prod. asst.		<u>21 Total</u> 1 satellite 2 hybrid 5 microwave 13 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
9/1/2008	274	73	<u>73 Full-Time</u> 3 managers 8 producers 5 anchors 6 writers 12 reporters 16 editors 16 photographers 7 prod. asst. <u>35 Part-Time</u> 6 writers 6 reporters 8 editors 7 photographers 8 prod. asst.		<u>21 Total</u> 1 satellite 2 hybrid 5 microwave 13 non-live
12/1/2008	274	73	<u>73 Full-Time</u> 3 managers 9 producers 5 anchors 6 writers 12 reporters 16 editors 15 photographers 7 prod. asst. <u>23 Part-Time</u> 2 writers 4 reporters 7 editors 1 photographer 9 prod. asst.		<u>21 Total</u> 1 satellite 2 hybrid 5 microwave 13 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
2/1/2009	272	72	<u>72 Full-Time</u> 3 managers 9 producers 5 anchors 5 writers 11 reporters 15 editors 17 photographers 7 prod. asst. <u>12 Part-Time</u> 4 writers 2 reporters 3 editors 3 prod. asst.		<u>21 Total</u> 1 satellite 2 hybrid 5 microwave 13 non-live
8/1/2009	205	47	<u>47 Full-Time</u> 3 managers 5 producers 5 anchors 2 writers 10 reporters 8 editors 12 photographers 2 prod. asst. <u>10 Part-Time</u> 3 writers 1 reporter 4 editors 2 prod. asst.		<u>15 Total</u> 1 satellite 1 hybrid 4 microwave 9 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
9/1/2009	200	45	<u>45 Full-Time</u> 3 managers 5 producers 5 anchors 3 writers 8 reporters 8 editors 11 photographers 2 prod. asst. <u>11 Part-Time</u> 4 writers 1 reporter 4 editors 2 prod. asst.		<u>14 Total</u> 1 satellite 1 hybrid 4 microwave 8 non-live
11/1/2009	199	42	<u>42 Full-Time</u> 3 managers 6 producers 4 anchors 3 writers 8 reporters 8 editors 9 photographers 1 prod. Asst. <u>11 Part-Time</u> 4 writers 2 reporters 3 editors 2 prod. asst.		<u>14 Total</u> 1 satellite 1 hybrid 4 microwave 8 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
1/1/2010	188	35	<u>35 Full-Time</u> 3 managers 6 producers 4 anchors 3 writers 5 reporters 6 editors 7 photographers 1 prod. asst. <u>13 Part-Time</u> 4 writers 3 reporters 4 editors 2 prod. asst.		<u>13 Total</u> 1 satellite 1 hybrid 3 microwave 8 non-live
1/1/2011	175	33	<u>33 Full-Time</u> 3 managers 6 producers 4 anchors 3 writers 4 reporters 6 editors 6 photographers 1 prod. Asst. <u>13 Part-Time</u> 2 writers 4 producers 4 editors 3 prod. asst.		<u>11 Total</u> 1 satellite 1 hybrid 2 microwave 7 non-live

Date	4(a) Number of persons at Secaucus, NJ facility	4(b) Number of WWOR-TV full-time news department employees	4(c) Number of persons employed in WWOR-TV newsgathering activities	4(d) Number of newsgathering persons who also were employed by affiliate of WWOR-TV	4(e) Number of news trucks dedicated to WWOR- TV's mobile satellite coverage of NJ
Current (as of 3/25/2011)	173	32	<u>32 Full-Time</u> 3 managers 6 producers 4 anchors 3 writers 3 reporters 6 editors 6 photographers 1 prod. Asst. <u>13 Part-Time</u> 2 writers 4 reporters 4 editors 3 prod. asst.		<u>11 Total</u> 1 satellite 1 hybrid 2 microwave 7 non-live

With respect to the data provided in the chart above, there is no single, definitive method of counting employees in each of the categories called for by the Commission's questions. WWOR-TV is commonly-owned with WNYW(TV), another broadcast station also located in the New York Designated Market Area. As is customary when a single entity operates more than one station in a geographic area, certain employees responsible for matters at WWOR-TV also are responsible for those same matters at WNYW(TV). Although common ownership would permit the economically efficient practice of co-locating personnel for multiple stations in a single building, Fox has taken the unusual step of maintaining distinct studio and office facilities for each of WWOR-TV and WNYW(TV). Despite the cost of this arrangement, Fox has maintained separate facilities for WWOR in part because of its steadfast commitment to New Jersey. Because of this unique situation, however, certain employees with responsibilities for both stations split their time between the New York and Secaucus facilities; the employees can and do perform work for WWOR-TV even if physically located in New York. For this reason, Fox cannot provide a simple "count" of employees that would accurately represent the personnel employed at the Secaucus facility. Instead, Fox must make

judgments about whether any particular employee should be included; the data provided above represents Fox's reasonable effort to make those judgments.⁹

The employee figures provided above include:

- (1) all of the full-time station staff employed at WWOR-TV;
- (2) all of the part-time station staff employed and available for work at WWOR-TV;
- (3) the management, human resources and other back-office staff who are employed at and responsible for both WWOR-TV and WNYW(TV) and who are present in the Secaucus, New Jersey facility at least once per week (consisting of 6 or 7 people during each of the reported time periods);
- (4) the management, human resources and other back-office staff who are employed at and responsible for both WWOR-TV and WNYW(TV) and who are present for varying amounts of time in the Secaucus, New Jersey facility (consisting of 11 people during each of the reported time periods);¹⁰
- (5) certain Fox corporate staff whose work relates to multiple Fox stations, including WWOR-TV, and whose offices are located

⁹ Fox is not aware of any Commission rule or policy requiring this count to be made in any particular manner. Indeed, as explained herein, facts about a station's number of employees are not material to review of a renewal application, so there are no Commission standards to guide the response to Request No. 4. Fox notes, however, that there are FCC rules (such as those governing equal employment opportunities) that sanction commonly-owned stations sharing employees. *See, e.g.*, 47 C.F.R. § 73.2080(e) (defining "station employment unit" as "a station or a group of commonly owned stations in the same market that share at least one employee").

¹⁰ Fox does not maintain records that enable it to quantify the precise amounts of time that the individuals in this category spend at WWOR-TV, and the amounts vary greatly depending on station needs. For instance, individuals in this category include members of Fox's negotiating team for collective bargaining with unions that represent employees at WWOR; these individuals have spent many weeks in a row full-time in Secaucus when conducting contract negotiations. In addition, members of the station's management and human resources teams work in the facility when implementing new policies or overseeing employment matters. Although Fox does not know the precise amounts of time that these individuals have spent in Secaucus during the time periods covered by this inquiry, the individuals in this category work in Secaucus frequently enough that they maintain offices (or shared offices) there.

full-time in the Secaucus, New Jersey facility (consisting of 10 to 17 people during each of the reported time periods); and

- (6) staff responsible for the sale of advertising for both WWOR-TV and WNYW(TV) whose job function requires them to often be on the road meeting with prospective advertisers in New Jersey and New York (consisting of 13 to 18 people during each of the reported time periods).¹¹

Aside from newsgathering staff, the figures above include master controllers, engineers, programming executives, employees in the traffic department (who schedule and coordinate the placement of advertising), custodians and other administrative staff (e.g., finance and information technology professionals). The figures above do *not* include additional people who are employed at the Secaucus facility on a daily basis, such as security staff and maintenance crews (for whom Fox contracts for services with third parties).¹²

With respect to the number of part-time employees identified in response to Request Nos. 4(a) and 4(c), Fox maintains a current roster of employees available to work part-time at WWOR-TV on an ongoing basis as needed. These employees are paid only in the months for which they actually perform work; Fox maintains this roster because its staffing needs – like most television stations – fluctuate somewhat over time. Although it does not typically maintain historical versions of these records, Fox did locate a copy of the roster of part-time employees from June 2009. The part-time figures above include any employee whose name appeared on the June 2009 or the (current) March 2011 rosters for whom Fox has payroll records confirming that such employee was paid as of an earlier date – in each case an individual was included in the count of part-time employees as of the earliest and latest months for which Fox has payroll records confirming that such

¹¹ While these individuals' primary offices are in New York, they do spend time in the Secaucus, New Jersey facility in order to conduct business in New Jersey. Advertising representatives host clients and attend events at WWOR's Secaucus facility, and Fox maintains an advertising sales office in the facility – with computers connected to its internal advertising sales software and databases – to enable advertising representatives to conduct work in Secaucus as appropriate.

¹² After the events of 9/11, Fox's parent company established a disaster recovery newsroom for the Fox News Channel at WWOR-TV's Secaucus, New Jersey facility. In the event of an emergency rendering Fox News Channel's New York City studios inoperable, Fox News Channel can originate programming from New Jersey. The figures above account for the part-time employee who works in the Secaucus facility in connection with maintaining the disaster recovery newsroom. Incidentally, Fox also took steps after 9/11 to ensure that the Secaucus facility also can be used as a back-up for WNYW(TV) in the event that an emergency prevents that station from broadcasting from New York City.

person was paid (as well as for any intervening months). For any individual who did not appear on either roster, but for whom Fox has payroll records confirming that such employee was paid during at least one of the months covered by the Commission's inquiry, Fox included such person in its count of part-time employees only for those specific months (as well as any intervening months if such person was paid in more than one month covered by the inquiry).

With respect to the response to Request No. 4(c), Fox included in its count of part-time newsgathering employees only individuals for whom Fox has payroll records confirming that such people were paid for one of the specified positions during one of the months covered by the Commission's inquiry. In these regards, the figures provided above actually undercount the number of part-time employees utilized by the station at any given time. The historical part-time rosters undoubtedly included additional individuals who were available for part-time work but for whom there happen to be no payroll records for the particular months covered by the Commission's inquiry; in fact, there are part-time employees identified on the June 2009 and March 2011 rosters who are not included in the above figures because Fox's records indicate that those individuals were not paid during the months covered by the Commission's inquiry.

Request No. 4(d) asks for the number of full-time and part-time newsgathering employees of WWOR-TV who were also employees, either full-time or part-time, of WNYW(TV), or of any other company or entity that was affiliated with WWOR-TV. Fox is not aware of any of its full-time or part-time newsgathering employees filling full-time positions at any other company or entity affiliated with WWOR-TV. Harry Martin, one of the lead news anchors for WWOR-TV's nightly newscast, also anchors the WNYW(TV) 6 p.m. newscast. At various times (as is customary in markets where a single entity operates two broadcast stations) some WWOR-TV employees worked on stories used by, and/or appeared on-air on, WNYW(TV); in many of these instances the stories originally were reported for WWOR-TV and were used by WNYW(TV) because they also were of interest to that station's viewers. Similarly, WWOR-TV employees sometimes have filled in for sick or vacationing WNYW(TV) employees. Fox does not maintain records regarding the frequency with which WWOR-TV employees worked on stories used by, or appeared on-air on, WNYW(TV) – a practice that varies literally day-by-day as circumstances warrant. When a newsgathering employee at WWOR-TV also is utilized by WNYW(TV), that does not change the individual's status as an employee of WWOR-TV.

With respect to the duties of newsgathering employees as reported above, each employee was assigned to one category even though, in certain instances, an employee performs more than one function (*e.g.*, if one employee is

both a producer and a copy editor, that employee is classified as either a producer or an editor and not both). The categories for job functions generally reflect that:

Producers – includes journalists who create story line-ups; oversee individual stories or segments; or oversee a newscast;

Anchors – includes on-air, in-studio journalists;

Writers – includes journalists who write scripts or prepare copy for broadcast;

Reporters – includes journalists who gather and report stories from the field;

Editors – includes journalists who gather news for broadcast; assign and direct field crews and reporters; or engage in electronic newsgathering (via electronic studio production through microwave and satellite);

Managers – includes journalists who direct the newsroom (including the news director and assistant news directors)

Photographers – includes journalists who work with reporters to gather news in the field or prepare live feeds via microwave or satellite; and

Production Assistants – includes journalists who assist the other categories in preparation of newscasts.

The answer provided in response to Request No. 4(e) accounts for *all* news trucks dedicated to WWOR-TV's mobile coverage of New Jersey, not just those related to mobile satellite coverage. At all times covered by the Commission's inquiry, WWOR-TV has had one satellite news truck, which is used for large scale events/stories at locations that require satellite shots (often determined by distance from the station's studio). After June 1, 2007, WWOR-TV also added two hybrid trucks to its fleet (it now has one); a hybrid truck is dual path and has the ability to transmit both via satellite and microwave. WWOR-TV also has had at least two microwave trucks at all times covered by the Commission's inquiry. These vehicles enable the station to transmit from locations that are sufficiently close to, and that have line-of-sight with, various antennas located throughout northern New Jersey. Finally, WWOR-TV at all times covered by this inquiry also has had at least seven non-live vehicles that are used for newsgathering. Journalists (including reporters

and photographers) use these vehicles when conducting reporting for stories that do not require live feeds.

With respect to the statement that, “[d]uring the last two years WWOR-TV has increased its newsgathering capabilities, adding new staff and enhancing its mobile satellite coverage,” the data above demonstrate that the station added two hybrid newsgathering trucks to its fleet. Moreover, while WWOR-TV has been forced to undergo an aggregate reduction in staff size, the station has taken several steps to enhance its newsgathering capability by adding new staff. Most importantly, Fox named Jim Driscoll as the full-time news director responsible solely for WWOR-TV in July 2008; he has been based full-time at the Secaucus, New Jersey facility since September 2008. Prior to that time, WWOR-TV shared a news director with WNYW(TV). In addition, in late 2008, WWOR-TV expanded its investigative reporting team – *Unit 9* – by hiring two new newsgathering employees from outside the company. WWOR-TV added a new investigative reporter and a new associate producer, both of whom were assigned to focus primarily on investigative reporting for WWOR-TV’s newscasts. These examples confirm that, even during the two years preceding the submission of Exhibit A on August 26, 2009, WWOR-TV continued to enhance its newsgathering capabilities.

Fox relied on more than 1,100 pages of employment documents from the files of WWOR-TV’s Finance Department to provide the basis for the employee information provided in response to Request No. 4. These documents include, for each of the time periods reported above, summary and detailed head count reports and pay and time detail reports, as well as employment rosters and general ledger reports. Because these reports contain information about numerous employees that implicate privacy concerns, and because this response is being filed as part of a public docket, at the direction of Commission staff, Fox is not submitting this data as part of its response.

Fox will make the information available upon request should the Commission desire to see it, notwithstanding that this response confirms, at all times covered by the Commission’s inquiry, that Fox had a reasonable basis for factual assertions that there has been a sufficient number of individuals who work at WWOR-TV’s Secaucus facility to disprove any suggestion that Fox has abandoned its commitment to New Jersey or that it has maintained a “skeleton operation” in the state.¹³ By any reasonable measure, this data confirms the only fact related to staffing that Fox has ever attempted to convey to the FCC: Fox has been committed

¹³ See Letter from Donna Sandorse, Voice for New Jersey, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Nov. 27, 2009) (“Sandorse Letter”), Exhibit A, at 5 (alleging without basis that Fox is “maintaining little more than a skeleton operation in New Jersey”).

to maintaining a substantial physical presence in New Jersey. Of course, the truly relevant factor for WWOR-TV's renewal application remains the high quality, issue-responsive over-the-air programming that the station provided to viewers throughout northern New Jersey during the preceding term of its license.

Moreover, Fox objects to the relevance of this inquiry to the extent that it seeks detailed information about the station's staffing levels. A broadcast station's number of employees is not pertinent to a renewal evaluation. To be clear, Fox did not present information to the Commission regarding staffing in order to demonstrate compliance with any FCC Rule or regulation related to the station's renewal application, nor did it supply the information to express that a station needs any particular number of employees in order to provide service to its viewers. Rather, Fox provided staffing information solely to rebut VNJ's accusations – first made in the Petition to Deny – that Fox had abandoned New Jersey.¹⁴

- 5. With reference to the statement on the first page of Exhibit A of the August 26 Letters, the September 4 Letter, and the September 23 Letter concerning the Station's "impressive record of service to the viewers of northern New Jersey – a service which the station is committed to continuing for the indefinite future," for each numbered and lettered paragraph in Section 2 of Exhibit A, to the extent not provided elsewhere in your response, (a) state whether, and if so, how, the Station's performance has changed since June 1, 2007, and (b) state when any changes took effect.**

The sub-headings that appear in *italics* below correspond with the categories of information in the numbered and lettered paragraphs of Section 2 of Exhibit A.

Daily News – Exhibit A stated that, since Fox acquired the station in 2001, WWOR-TV has "broadcast more than 2000 hours of regularly scheduled newscasts"; "more than 200 hours of public affairs programming" and "in the last two years . . . more than 20,000 public service announcements benefiting local charities and residents."

- (a) Between 2001 (when Fox became the licensee of WWOR-TV) and June 1, 2007, the station broadcast more than 2000 hours of regularly scheduled newscasts. Since June 1, 2007, the station has aired an additional approximately 885 hours of regularly scheduled newscasts.

¹⁴ VNJ Petition to Deny, at 14.

Between 2001 and June 1, 2007, WWOR-TV broadcast more than 200 hours of public affairs programming. Since June 1, 2007, the station has aired an additional 153 hours of public affairs programming.

These figures relate *only to regularly scheduled* news and public affairs programming; they do not account for the time spent providing news updates or interrupting regular programming for breaking news (see below).

WWOR-TV also has continued to broadcast public service announcements (“PSAs”) benefiting local charities and residents; overall the station broadcast more than 33,000 PSAs during the years 2007-2010.

Changes regarding the number of hours of news and public affairs programming are identified in the responses to Request Nos. 1 and 2.

- (b) No response is required except as set forth in the responses to Request Nos. 1 and 2, which are incorporated by reference.

Nightly News – Exhibit A stated that WWOR-TV has broadcast a one-hour nightly newscast, “which spent a substantial amount of time covering issues of importance to northern New Jersey viewers, including extensive coverage of elections and local events.”

- (a) The station has continued to spend a substantial amount of time covering issues of importance to northern New Jersey viewers, including extensive coverage of elections and local events. Furthermore, WWOR-TV has expanded to one hour its regularly scheduled newscast when events warrant (for example, on Election Night in 2009 and 2010 and when news broke regarding a corruption scandal in New Jersey in July 2009).

Changes regarding the number of hours of news programming are identified in the responses to Request Nos. 1 and 2.

- (b) No response is required except as set forth in the responses to Request Nos. 1 and 2, which are incorporated by reference.

News Updates – Exhibit A stated that WWOR-TV “has increased its newsgathering capabilities, adding new staff and enhancing its mobile satellite coverage,” and that it added regularly scheduled local news updates running between 4:00 and 7:00 p.m. on weeknights. Exhibit A also stated that WWOR-TV interrupted regularly scheduled programming for breaking news reports of importance to northern New Jersey viewers (including, for example, severe weather warnings, Amber Alerts, and addresses by the Governor of New Jersey). Exhibit A also stated that WWOR-TV carried coverage of the Governor’s annual State of the State address.

- (a) From June 1, 2007 until July 2009, WWOR-TV provided regularly scheduled news updates once an hour between 4:00 and 7:00 p.m. In July 2009, at a time coinciding with the station’s changes to its daily newscasts, WWOR-TV ceased providing regularly scheduled hourly news updates.

The station continues to interrupt regularly scheduled programming to provide viewers with breaking news reports of importance to northern New Jersey viewers. These breaking news reports have included, for example, severe weather warnings, Amber Alerts, addresses by the Governor of New Jersey, and breaking news regarding important local issues, such as coverage of the death of a New Jersey state trooper, coverage of a New Jersey corruption scandal and coverage of election results.

In particular, WWOR-TV provided broadcast coverage of the New Jersey Governor’s debate in October 2009. It also has continued to carry both the Governor’s State of the State address each year and the New Jersey Budget Address each year. In 2010, WWOR-TV carried both Gov. Christie’s Emergency Budget Address and his regular Budget Address. The station also produced and broadcast a half-hour special report on bullying in the wake of the death of a Rutgers University student.

Changes regarding the number of employees and vehicles are identified in the response to Request No. 4.

- (b) No response is required except (i) as set forth in the response to Request No. 4, which is incorporated by reference; and (ii)